

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
WORKERS' COMPENSATION COURT  
RULES OF PRACTICE

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Chief Judge

# WORKERS' COMPENSATION COURT

## RULES OF PRACTICE

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## WORKERS' COMPENSATION COURT

### RULES OF PRACTICE

#### I

### GENERAL RULES

1.1. ADOPTION OF RULES – APPLICATION. -- The provisions contained in these Rules of Practice shall take effect when approved by the Rhode Island Supreme Court, and shall be cited as W.C.C. - R.P. These rules shall be applicable to all matters pending on the day of approval and such matters as may be filed with the Court thereafter.

**Reporter's Notes. The Workers' Compensation Court Rules of Practice have been revised on several occasions to address statutory changes which have required rule revisions. The most recent amendments to the Rules were approved by the Rhode Island Supreme Court and became effective on February 23, 2004.**

1.2. POWERS OF ADMINISTRATIVE JUDGE. -- Notwithstanding anything in these Rules of Practice to the contrary, the Chief Judge of the Workers' Compensation Court as the Administrative Judge, by virtue of Chapter 29 through 38 and Chapter 47 of Title 28 of the General Laws, as amended, shall continue to have and exercise the powers therein given.

1.3. AGREEMENTS AND STIPULATIONS. – All agreements and stipulations of the parties, except those made orally on the record during the course of a hearing before a stenographer, shall be reduced to writing and properly captioned with the cause of action to which the same relates. A stipulation withdrawing a petition or claim for trial shall be signed by all counsel of record and filed with the Court. All other agreements and stipulations, in order to be binding, must be dated and signed by counsel of record and filed with the Administrator's Office. If an agreement or stipulation is entered by a Judge of the Court, it will be deemed to have the same force and effect as an order of the Court. The Court, on its own motion or on the motion of any party, may strike any agreement or stipulation for just cause.

**Reporter's Notes.** This rule substantially reflects the present practice in effect before the Workers' Compensation Court. It should be noted that stipulations withdrawing petitions or a claim for trial following the entry of a pretrial order must be signed by all counsel of record. While Chaves v. Robert E. Derecktor of Rhode Island, Inc., 569 A.2d 1063 (R.I. 1990) indicates that a claim for trial may be unilaterally withdrawn, this rule recognizes that a withdrawal prior to the entry of a final decree may constitute a successful defense of a petition on behalf of an employee which would require an award of costs, counsel and witness fees pursuant to R.I.G.L. § 28-35-32.

1.4. **WITHDRAWAL OF ATTORNEYS.** -- No attorney appearing in any case will be allowed to withdraw without the consent of the court, except where another attorney enters an appearance at the time of such withdrawal. All other withdrawals shall be upon motion with reasonable notice to the party represented. No such motion shall be granted unless the attorney who seeks to withdraw shall file with the clerk the last known address of his or her client, or the client files his or her address, and in either situation the address which is filed shall be the official address to which notices may be sent. A motion for withdrawal shall be accompanied by an affidavit setting forth facts showing the military status of the client, or by a written statement of the client consenting to such withdrawal. No motion to withdraw an appearance will be granted if it appears that the client is in the military service of the United States, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto, unless the client consents thereto in writing, or another attorney enters as counsel of record at the time of such withdrawal.

1.5. **RELIEF OF ERROR IN DECREES OR ORDERS – CLERICAL MISTAKES.** –

Clerical mistakes in decisions, orders or other parts of the record, and errors therein arising from oversight or omission, may be corrected by the Judge at any time on the Judge's own initiative or on the motion of any party filed before the decree is entered, and after such notice, if any, as the Judge orders.

**Reporter's Notes.** This rule is self-explanatory and modeled after Rule 60(A) of the Superior Court Rules of Procedure. It also recognizes the procedure outlined in W.C.C. – R.P. 2.20 which provides that all parties will be provided seventy-two (72) hours notice before a decree may be entered. It is anticipated that all clerical errors will be recognized and brought to the attention of the Court prior to the time any proposed order or decree is

**entered. This rule also anticipates that errors which are brought to light following the entry of the decree may be corrected by the Judge who entered the original decree if it truly involves a purely clerical error and, in all other situations, would be subject to review by the Appellate Division of the Workers' Compensation Court.**

## II

### TRIAL

2.1. (A) CALENDAR. -- The Chief Judge shall designate a pretrial calendar as necessary to expedite the disposition of cases as outlined in R.I.G.L. § 28-35-20(a). All cases filed with the Court, excluding appeals from the Department of Labor and Training and from the Medical Advisory Board, requests for anniversary reviews, petitions for settlement pursuant to R.I.G.L. §28-33-25 and 28-33-25.1 and petitions to determine a controversy involving disputes under the coverage provisions of an insurance policy filed pursuant to R.I.G.L. §28-30-13 shall be assigned to pretrial conference by the Court and placed on the pretrial calendar for a day certain on or before the 21<sup>st</sup> day from said filing. The Administrator shall notify the parties of the date of said assignment.

(B) In the event that a petition is withdrawn without prejudice by stipulation or dismissed without prejudice by the Court, such petition shall be referred back to the judge previously assigned to hear the matter if the petition is filed again within one (1) year of the withdrawal or dismissal.

**Reporter's Notes.** This recognizes the expanded jurisdiction of the Court following the 1992 Workers' Compensation Reform Legislation (P.L. 1992, Ch. 31). The Court is now required to review the decisions of the Medical Advisory Board regarding the discipline of health care providers under R.I.G.L. § 28-30-22(e) and the determinations of the Department of Labor and Training relating to employers' failure to maintain insurance coverage. In such situations, the Court's review is focused on the record of the proceedings before the administrative body and a pretrial conference under those circumstances would appear superfluous

The elimination of the pretrial conference in cases where the Court is requested to conduct an anniversary review pursuant to the provisions of R.I.G.L. § 28-33-46 also reflects a practical approach to the statute. Since the anniversary review anticipates the compilation of numerous medical records prior to action by the Court, the twenty-one (21) day pretrial conference would be counter-productive.

The provision in this rule that petitions for settlement filed under R.I.G.L. §28-33-25 need not be assigned for pretrial conference is in compliance with long-standing practice and also recognizes the basic purpose of R.I.G.L. §28-35-20. Since petitions for settlement are not technically adversarial, there should be no issues in dispute and, therefore, no necessity for a pretrial conference or pretrial order.

**Additionally, the provisions of W.C.C. – R.P. 2.26 establish provisions to ensure that no issues remain in dispute at the time a petition for the approval of a settlement is filed.**

**The most recent amendment to this rule similarly reflects the longstanding practice of the Court which was implemented to prevent a petitioner accepting a dismissal without prejudice in order to shift the matter in dispute to another judge of the Court.**

2.2. HEARING. -- When reached, the Judge to whom the pretrial conference has been assigned shall conduct the pretrial conference in conformance with R.I.G.L. § 28-35-20(c).

2.3. PRETRIAL CONFERENCE – FAILURE TO APPEAR.

(A) In the event that a party, after proper notice, fails to appear at pretrial conference, the Trial Judge before whom the matter is being heard may, in his or her discretion, enter a pretrial order granting, denying or dismissing the petition. Dismissals may be with or without prejudice. Any order so entered shall contain a finding that the absent party, with due notice, failed to attend.

(B) Relief from Pretrial Order.

Where a pretrial order has been entered by the court following a party's failure to appear, the court may, on motion and upon such terms as are just, relieve a party from any order which has entered pursuant to R.I.G.L. § 28-35-20 for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) fraud, misrepresentation or other misconduct of an adverse party; (3) the pretrial order is void; (4) the orders have been previously satisfied, released, or discharged; or (5) any other reason justifying relief from operation of the pretrial order. The motion shall be filed within a reasonable time and not more than six months after the pretrial order was entered. A motion under this rule does not affect the finality of the pretrial order or suspend its operation.

**Reporter's Notes. This rule varies substantially from the practice in other courts and acknowledges the requirements imposed by R.I.G.L. § 28-35-20 on the Court with reference to the pretrial conference. It also recognizes that in proceedings before the Workers' Compensation Court service of process on the respondent is, in fact, effectuated by the Court. (R.I.G.L. § 28-35-14, § 28-35-15, § 28-35-17). In those cases where a party fails to appear, the Court may, in its discretion, allow the appearing party to proceed and may thereafter enter an order adverse to the absent party.**

**W.C.C. - R.P. 2.3(B) is modeled after Rule 60(b) of the Superior Court Rules of Procedure but limits the time within which to file a motion seeking relief from a pretrial order to a period not to exceed six (6) months from the date the pretrial**

**order was entered. Since an unappealed pretrial order ripens into a decree under the provisions of R.I.G.L. § 28-35-20, review of such a decree alleging fraud is governed by R.I.G.L. § 28-35-61 which requires that any petition alleging that a decree has been procured by fraud must be filed within six (6) months of the date such decree was entered. This rule is therefore modified to reflect that statutory time constraint.**

2.4. INITIAL HEARING. -- In all matters in which a claim for trial has been filed following the entry of a pretrial order, the Court may conduct an initial hearing in order to reduce the issues in dispute and to arrange trial and briefing schedules.

No oral testimony shall be taken at the initial hearing, however, the hearing may be on the record at the discretion of the Trial Judge and all agreements shall be binding. All documentary evidence, including depositions and medical affidavits, which the parties intend to introduce in connection with the trial shall be submitted at the time of initial hearing. All motions to compel production filed by either party in accordance with Rule 2.17 shall be on the record or by stipulation, at the discretion of the Trial Judge, at the time of initial hearing. The Trial Judge shall rule on any objections interposed to the production of documents during the course of the initial hearing. If there are any subsequent requests for production or objections raised during the course of trial, such requests shall be heard at a time scheduled by the Trial Judge. The parties shall designate any expert witnesses whom they intend to testify before the Court and provide three (3) dates upon which the witness is available to testify. The parties shall, at the request of the Trial Judge, designate trial counsel.

At the time of initial hearing, counsel for all parties shall submit a joint filing which shall certify that they have conferred in good faith to attempt to resolve the disputed issues prior to the time of initial hearing.

The initial hearing may not be waived without leave of the Court. In the event that a party fails to appear at the initial hearing, the Court may enter orders adverse to the party so failing to appear and/or impose other sanctions deemed appropriate.

**Reporter's Notes. This rule is intended to assist the Court and counsel in scheduling trial calendars. R.I.G.L. § 28-35-17 (b) mandates that following a claim for trial, the Court shall schedule an initial hearing within thirty (30) days of the date the claim for trial is filed. The decision to utilize the initial hearing is left to the discretion of the Trial Judge but, in those cases where the initial hearing is held, this rule sets forth the procedure to be utilized. Since counsel are expected to present affidavits and other documentary evidence at the time of the initial hearing, it is anticipated that motions for protective order filed pursuant to W.C.C. – R.P. 2.13(B)(3) will be filed and heard at the time of the initial hearing. The most recent amendments to this rule address discovery practices which have emerged in the Court and allows the trial judge to expedite the discovery process and move the matter to trial as soon as practical. Finally, the certificate requires the parties to actually confer prior to the date of the initial hearing in the effort to reduce the**

**issues in dispute to a minimum and to file an affidavit reflecting this fact.**

2.5. DOCKETING. – All cases shall be docketed and numbered consecutively by year.

2.6. TRIAL DATES. -- Cases may be assigned for trial on any day, Monday through Friday, of each week of the year, except that no cases shall be assigned to a legal holiday or such other days as the Court shall set.

2.7. CONTINUANCE. -- All motions for continuances shall be heard by the Judge to whom the case is assigned; motions for continuances shall be addressed to the sound discretion of the Judge assigned to hear the case. The Judge shall give due regard to the policy of the Court to provide prompt and speedy trials. No continuance will be granted without good cause.

2.8. CONTINUED CASE STATUS. -- All attorneys having continued matters on the calendar shall present themselves before the Judge – to whom the matter has been assigned or the Judge’s clerk between 8:30 A.M. and 9:30 A.M. on the day assigned and apprise the Judge and/or the Judge’s clerk as to the status of the particular matter before the Judge on that day.

2.9. EXCUSAL OF ATTORNEY. -- No attorney shall be excused from attendance at the Court except upon application to the Chief Judge, or the Judge designated to act in the absence of the Chief Judge, and such excuse from attendance shall be granted on such terms and conditions as the Court may set, including notice of such request to be excused to attorneys of record in all pending cases assigned during the respective excuse period. All Motions to be Excused shall contain a statement that the attorney requesting to be excused has spoken to all Judges on whose calendar he or she has a case scheduled for trial during the period of excusal, and that the Judge or Judges spoken to do not object to the request to be excused. Said motion if granted shall not result in a continuance of any cause in which counsel of record have not been notified as above provided. All requests for excusal shall be submitted no later than fifteen (15) days prior to the commencement of the period for which excusal is sought.

In case of the sudden illness of an attorney, or the attorney’s absence from a hearing for some other imperative and unforeseen cause, a Judge shall take such action, without notice, as shall appear reasonable in the circumstances.

2.10. EXAMINATION AND CROSS-EXAMINATION. – The examination and cross-examination of any witness shall be conducted by only one attorney for each party. The attorney shall stand while so examining or cross-examining, or addressing the Judge, unless, for satisfactory reasons, the Judge presiding at the trial shall suspend this rule in a particular case.

2.11. SUBPOENA – FOR ATTENDANCE OF WITNESSES; FORMS; ISSUANCE.

-- Every subpoena shall be issued either by the Office of Administrator, a Notary Public, any officer authorized by statute, or the attorney of record. It shall state the name of the Court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified and/or it may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the Court upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable and/or unduly burdensome.

2.12. SERVICE. - - A subpoena may be served by a sheriff, by a deputy, by a constable, or by any other disinterested person over the age of eighteen (18) years. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by rendering to them the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the state or an officer or agency thereof, fees and mileage need not be tendered. A subpoena may be served at any place within the State.

2.13. DEPOSITIONS IN PENDING ACTIONS. -- (A) Any party may take the testimony of any person, including a party, by deposition upon oral examination for the purpose of discovery or use as evidence in the trial of the action. The deposition may be taken without leave of court provided that notice is given to the opposing party no less than seven (7) days prior to the taking of the deposition or if the parties agree to the taking of the deposition upon shorter notice. The attendance of witnesses may be compelled by the use of subpoenas. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

In the event that a party files a notice of deposition of an expert witness and indicates in said notice that the deposition is to be taken for use at trial, the failure of a party or his/her/its attorney to appear at the deposition after proper notice shall be deemed a waiver of the right to examine or cross-examine the deponent and shall be deemed a waiver of the right to object to the admissibility of the deposition transcript at trial.

(B) Orders for the Protection of Parties and Deponents.

(1) Objections to the taking of a deposition and motions for protective orders must be filed at least 48 hours prior to the scheduled time of the deposition.

(2) After notice is served for taking a deposition by oral examination, upon motion or objection timely filed made by any party or by the person to be examined and upon notice and for good cause shown, the court may make an order that the deposition shall not be taken, or that it may be taken only at some designated time or place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that the deposition be sealed and opened only by order of the court or such other conditions as the Court deems appropriate.

(3) The court may, in its discretion, upon motion after notice is given of the intention to submit evidence by affidavit pursuant to R.I.G.L. § 9-19-27, or objection to an Impartial Medical Examination report seasonably made, require the party seeking to take the deposition of the expert witness or other party to pay the costs incurred in the taking of the deposition including a reasonable expert witness fee or such other conditions as the Court deems appropriate.

(4) The power of the court under this rule shall be exercised with liberality toward the accomplishment of its purpose to protect parties and witnesses.

**Reporter's Notes.** This rule recognizes prior practice before the Court and the strong reliance of the Court and the litigants on the use of the deposition to present the testimony of expert witnesses. The rule has been modified somewhat in order to standardize the practice in those cases where a party is seeking to take the deposition of an expert witness for use as evidence. W.C.C. – R.P. 2.13(A) requires the party taking the deposition to state in the notice of deposition that the testimony is being taken for use at trial. When such notice is given, the burden shifts to the adverse party to appear at the deposition and voice any objections to the admission of the deposition as evidence. In the event that a party fails to appear to voice objection, such absence shall be deemed a waiver of any objection to the admission of the deposition on the grounds of hearsay. The rule also anticipates that any other objections not waived by the party's failure to appear may still be raised and ruled upon by the Trial Judge.

W.C.C. – R.P. 2.13(B)(3) is new and slightly modifies the ruling of the R.I.

Supreme Court in Gerstein v. Scotti, 626 A.2d 236 (1993), with reference to the payment of an expert witness fee. While the rule still requires the proponent of an affidavit to pay the fees charged by the expert witness for the first hour of cross-examination in most cases, it also recognizes the economic disparity which may exist between the employer and employee in workers' compensation litigation. This rule allows a party offering an affidavit to seek a protective order where the exercise of the right of cross-examination could result in the exclusion of the affidavit due to the

inability of a party to pay the expert witness fee in advance. It is anticipated that in ruling on a motion for protective order filed under this section, the Court will assess and attempt to balance the interests of all parties utilizing the guidelines enunciated by the R.I. Supreme Court in Martinez v. Kurdziel, 612 A.2d 669 (1992). This procedure also allows the Court to shift the expenses of cross-examination in those cases where it is determined that a party's exercise of the right will prove unduly burdensome to the other party. Finally, this rule recognizes the unique situation which arises in

workers' compensation cases under the provisions of R.I.G.L. § 28-35-32. This section requires that the employer shall pay costs, counsel and witness fees to an employee who is successful in prosecuting or defending a petition before the Court. Since the employee may ultimately be entitled to recoup expert witness fees where a case is successfully prosecuted or defended the shifting of these costs prior to that time where justice so requires does not seem particularly onerous.

#### 2.14. DEFAULT; REFUSAL TO MAKE DISCOVERY – CONSEQUENCES.

A) If a party, or an officer or managing agent of a party, without good cause fails to appear for his or her deposition after being served with proper notice, the Trial Judge on motion may make such orders in regard to the failure as are just, including but not limited to: (a) dismissing the petition or entering orders adverse to that party or; (b) or requiring the party to submit to his or her deposition at a time and place set by the court and to pay the reasonable expenses incurred in reconvening the deposition, including reasonable attorneys' fees.

B) If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, the proponent may apply to the court for an order compelling an answer. If said motion is granted, the court shall order the party to submit to further examination under such circumstances as the court may deem just.

2.15. ARGUMENT. – Arguments at the conclusion of the testimony in any hearing may be requested, and if granted, shall be limited at the discretion of the Trial Judge. When more than one attorney is to be heard on the same side, the time may be divided between them as they may elect. The Trial Judge may request proposed findings of fact from the parties.

2.16. AMENDMENT OF PLEADINGS. -- The Court shall in its discretion allow amendments to any of the pleadings in a cause at any time prior to the rendering of a decision.

2.17. MOTIONS. -- Motions shall be addressed to and heard at the discretion of the Trial Judge. All motions, except motions to amend the pleadings, shall be in writing and filed with the Court and a copy thereof and notice of hearing delivered to the opposing party.

2.18. NOTICE OF FILING -- When an attorney enters his or her appearance on behalf of the party to a pending action, all subsequent petitions involving the same parties or the same matter in controversy shall be mailed to all counsel of record by the attorney filing the subsequent petition or petitions so long as there is litigation between the parties pending before the Court.

2.19. NOTICE OF DECISIONS. - - The Office of Administrator shall forward a copy of the decision and proposed decree in any matter heard and decided by the Court. In the event that the Trial Judge renders a bench decision, the Office of Administrator shall forward a notice of decision and copy of the proposed decree to all parties of record in accordance with this rule. Such notice shall be transmitted by the Office of Administrator to the attorneys of record. In cases where there is no attorney of record, notice shall be given to the parties by mailing said notice by regular mail to the address set forth in the docket.

2.20. DECREES. - - The Court shall prepare an appropriate decree and a copy thereof, and present the same for entry within the time provided by law. A copy of the decree shall be mailed to the attorneys of record at least seventy-two (72) hours prior to entry thereof and an appropriate certificate to that effect shall appear on the decree presented for entry.

2.21. TESTIMONY. - - The testimony of all parties and witnesses before a Judge shall be given under oath or affirmation and governed by the Rhode Island Rules of Evidence except as modified by these Rules.

2.22 PETITIONS. - - (A) All petitions to review, petitions to enforce, and petitions to adjudge in contempt, and each copy thereof required to be filed, shall be accompanied by a legible copy of the appropriate agreement and/or decree sought to be reviewed or enforced. The Administrator's Office shall not accept any petition which is not filed in accordance with this

rule. In the event any such petition is accepted by the Administrator's Office it shall be subject to being dismissed without prejudice for failure to be in proper form.

(B) All petitions seeking payment of bills for medical services rendered, and each copy thereof required to be filed, shall be accompanied by a legible copy of the bill, the report upon which the bill for services is based and, if liability has been established, a legible copy of the agreement and/or decree sought to be reviewed. All such petitions shall also be accompanied by an affidavit of a treating or consulting doctor that the service provided was necessary to cure, rehabilitate or relieve the person to whom the service was rendered of the effects of the injury set forth in the agreement and/or decree under review. The Administrator's Office shall not accept any petition which is not filed in accordance with this rule. In the event any such petition is accepted by the Administrator's Office, it shall be subject to dismissal without prejudice for failure to be in proper form.

## 2.23. DISMISSAL OF ACTIONS. - -

### (A) VOLUNTARY DISCONTINUANCE: EFFECT THEREOF.

(1) BY PETITIONER, BY STIPULATION. A proceeding may be discontinued by the petitioner without order of the Court: (i) by filing a stipulation at any time before the adverse party has filed an answer or entry of appearance or, (ii) by filing a stipulation of discontinuance signed by all parties who have appeared in the proceeding.

(2) BY ORDER OF COURT. Except as provided in paragraph (1) of this section, a proceeding shall not be discontinued, nor a claim for trial withdrawn, at a party's insistence save upon order of the Court after hearing, and upon such terms and conditions as the Court deems proper. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(B) INVOLUNTARY DISMISSAL: EFFECT THEREOF.

(1) BY COURT. The Court may, in its discretion, dismiss any proceeding for lack of prosecution on its own motion.

(2) ON MOTION OF THE RESPONDENT. On motion of the respondent, the Court may, in its discretion, dismiss any action for lack of prosecution as provided in paragraph (B) (1) of this subdivision.

(3) EFFECT. Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision (B) (1) and (2), shall be with prejudice.

2. 24. REPORTS OF COURT-APPOINTED IMPARTIAL MEDICAL EXAMINERS.

- - The report of the findings of the court-appointed impartial medical examiner and/or a comprehensive independent health care review team shall be admissible as an exhibit of the court. The court shall provide copies of the report to the parties or their attorneys upon receipt. If a party elects to contest the findings of the report, notice of contest must be filed with the court within ten (10) days of receipt of the report. A notice of deposition to depose the impartial medical examiner, a subpoena issued to the examiner to appear in court at the next scheduled hearing, or a notice of objection signed by the contesting party and filed with the court, shall constitute a notice of contest as required by section 28-33-35 if filed with the court within ten (10) days of receipt of the report. The contesting party shall pay the cost of the deposition of the examiner, including any reasonable fee to the examiner, or the cost of the appearance of the examiner to testify before the court, subject to the procedure set forth in W.C.C. – R.P. 2.13(B)(3). If after hearing, the employee has successfully prosecuted his/her petition or has successfully defended, in whole or in part, any employer’s petition, the employer shall reimburse the employee for the entire cost of the deposition or testimony of the author of the report.

**Reporter’s Notes. This rule reconciles several different statutory provisions regarding the appointment and use of the impartial medical examiner. The appointment of an impartial medical examiner to examine an employee and to provide advice on the employee’s medical status can occur at several points in a workers’ compensation case. Under the provisions of R.I.G.L. § 28-33-34.1, any employee who has received compensation benefits for more than six (6) months must submit to an impartial medical examination arranged by the administrator of the Medical Advisory Board even though no petition is pending before the Court. In addition, the Court has retained the authority to appoint an impartial medical examiner to assist in resolving disputed medical questions. These rules also envision the appointment of an impartial health care review team to assist the Court when a**

request for an anniversary review is filed with the Court. Finally, the Court is authorized to order an impartial medical examination pursuant to R.I.G.L. § 28-34-5; § 28-35-22 and § 28-35-24.

While most of these provisions are silent regarding the procedure to be followed to preserve a party's right of cross-examination of the author of the report, R.I.G.L. § 28-33-35 imposes a duty on any party contesting the report of the impartial examiner to file a "Notice of Contest" within ten (10) days of the receipt of the report.

The rule promulgated by the Court recognizes the value of adopting a uniform procedure to ensure a party's right of cross-examination and applies the rule to all situations where an impartial examination is held. The rule also liberally interprets the term "Notice of Contest" to include any document or pleading designed to apprise a party and the Court that the objecting party intends to preserve the right to cross-examine the author of the report.

2. 25. AFFIDAVIT OF THE TREATING PHYSICIAN. - - The affidavit of the treating physician shall be admissible as an exhibit of the Workers' Compensation Court if presented in accordance with the provisions of R.I.G.L. § 9-19-27 and § 9-19-39, with or without the appearance of the affiant. Both parties retain the right to examine or cross-examine the physician by deposition or in court, subject to the procedure set forth in W.C.C. – R.P. 2.13(B)(3).

2. 26. PROCEDURE FOR LUMP SUM SETTLEMENT OR STRUCTURED-TYPE PAYMENT AND SETTLEMENT OF DISPUTED CASES. - - (1) Every petition for approval of a lump sum settlement or structured-type payment shall set forth the pertinent facts, including but not limited to, the nature of the injury, the length of incapacity, the names and addresses of all medical care providers who have treated the employee, as distinguished from examining physicians, and the calculation of the settlement amount.

(2) The following documents shall be attached to the petition at the time of filing, and the Office of Administrator shall not accept any petition for filing unless accompanied by all necessary documents:

(a) A legible copy of the outstanding or most recent agreement or decree or order of the Court pursuant to which weekly benefits were paid to the employee, as well as a copy of the agreement or decree which established initial liability for the injury or injuries which is/are the subject of the proposed commutation. It must be established at the time of hearing on the petition that the employee has received payments for not less than six (6) months prior to the date of the filing of the petition for approval of the settlement.

(b) A statement, dated within thirty (30) days of the date of the filing of the petition, upon the letterhead of and signed by the physician who is currently treating the employee for the injury for which the employee is receiving compensation, describing the employee's present physical condition insofar as it relates to the work-related injury and

containing an unequivocal statement as to the employee's ability to work or lack thereof; or in the event that the employee is no longer treating, a medical report from the physician with whom the employee last treated indicating the employee's condition as of the date of the last treatment, including the employee's physical condition at that time insofar as it related to the work-related injury and containing an unequivocal statement as to the employee's ability to work or lack thereof at that time.

(c) An affidavit of the attorney of record for the employer or a copy of the letter mailed to the employer establishing that the employer, as distinguished from the insurer, has been notified of the details of the proposed settlement, and of its right to be heard thereon. Failure of the employer to appear at the hearing following receipt of sufficient notice shall be deemed a waiver of the employer's right to be heard.

(d) An affidavit of an individual having personal knowledge of such fact or a copy of a letter to the employer, establishing that the employer, as distinguished from the insurer, has been advised of the potential effect of the proposed settlement on its workers' compensation insurance premium.

(e) Copies of all impartial examinations performed at the direction of the Medical Advisory Board and/or the Court.

(f) A statement listing all medical service providers known to the parties who have provided any services to the employee.

(3) Any dispute as to the reasonableness of any charge for medical services shall be brought to the attention of the Judge hearing the petition who may, in his/her discretion (a) conduct a hearing pursuant to § 28-35-20 et seq. to address the charges in dispute; (b) continue the hearing on the petition for commutation until the dispute is resolved; or (c) dismiss the petition without prejudice.

(4) The petition shall be considered by a judge of the court and may be granted where it is shown to the satisfaction of the court that the payment of a lump sum of structured-type payment in lieu of future weekly payments will be in the best interests of all parties, including the employee, employer and insurance carrier.

(5) The fees of the attorney for the employee shall be approved by the Judge and the amount of such fees shall be stated in the decree.

(6) If, after hearing in open Court, it is determined that the proposed settlement is in the best interest of all parties, the Trial Judge shall enter an order so finding and directing that commutation payments so ordered shall be made within fourteen (14) days of the date of the hearing. The Trial Judge shall in his/her order schedule a hearing date for the entry of a final decree.

(7) On the date and time set by the Trial Judge, the parties shall appear and submit a final decree for entry by the Court. The decree presented shall contain an agreement signed by

all counsel that all payments ordered at the time of the commutation have been made and that all medical expenses incurred in the care and treatment of the employee by the medical service providers listed on the statement filed pursuant to W.C.C. – R.P. 2. 26(2)(f) have been paid.

The final decree shall fully and finally absolve the employer from all future liability to the employee under the terms of the Workers' Compensation Act.

(8) Every petition for approval of a settlement of a disputed claim pursuant to § 28-33-25.1 shall contain a recitation of the pertinent facts of the case and the form and amount of the proposed settlement, including the net amount to be realized by the employee under the terms of the proposed settlement.

**Reporter's Notes.** This rule is designed to standardize the practice of the Court regarding petitions for approval of settlement. The 1992 Reform of the Workers' Compensation Law (P.L. 1992, Ch. 31) eliminated a unilateral petition to commute future benefits and authorized the Court to hear petitions for approval of a settlement only when they are filed jointly. This rule, recognizing that such petitions are now filed only when the parties have agreed to settle a case, now requires that the parties submit sufficient documentary evidence with the petition to allow the Court to review the matter and determine if the proposed settlement meets the standard enunciated in R.I.G.L. § 28-33-25.

This rule also recognizes the recent statutory amendment requiring that all settlement payments approved by the Court must be paid within fourteen (14) days of the date the order is entered and requires the parties to appear and present a pleading indicating that all required payments have been made prior to the entry of a decree discharging the employer from all future liability. It is anticipated that the use of this rule will virtually eliminate all petitions which now are filed after a settlement has been approved alleging a failure to make payments under the terms of the Act.

2. 27. NOTICE OF INTENT TO DISCONTINUE – WAGE TRANSCRIPT. - - Upon the filing of an objection to a notice to discontinue, suspend, or reduce payments of compensation based on an allegation that the employee has returned to work at an average weekly wage equal to or in excess of that which he or she was earning at the time of the injury pursuant to § 28-35-47, the Director of the Department of Labor and Training shall forward a copy of the notice of intent, a copy of the wage transcript and a copy of the objection to the notice of intent to the Workers' Compensation Court. Upon receipt the Workers' Compensation Court shall schedule a pretrial hearing pursuant to § 28-35-20 of the Workers' Compensation Act.

2. 28.(A) SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; SANCTIONS. - Every pleading, written motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign the

party's pleading, motion, or other paper and state the party's address and telephone number. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, any appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

(B) All proceedings for costs, expenses, reasonable attorney's fees and/or penalties to be assessed for delay or inaction without just cause pursuant to § 28-35-17.1 or for sanctions pursuant to section (A) of this rule shall be heard by the Trial Judge at such time as he or she shall determine. In the event that such proceedings are instituted at the appellate level, notice of such action shall be provided by the appellate panel assigned to hear the appeal advising the party or attorney of the pendency of the hearing and providing him/her an opportunity to be heard.

**Reporter's Notes. This rule has been extensively revised and follows generally the most recent amendment to Superior Court Rules of Civil Procedure Rule 11. It affirms the requirement of good faith in pleading and requires the pleader to assert that there is a good faith basis for the pleading and that it is based in fact and warranted by existing law. The amendments to this rule establish procedures consistent with the provisions of R.I.G.L § 28-33-17.3.**

2. 29. PROCEDURE AND ORDER OF TRIAL - - All attorneys shall be prepared on the trial day or as directed by the Trial Judge to have their case heard.

2. 30. ANNIVERSARY REVIEW - - (A) An employer and its Workers' Compensation insurance carrier, if applicable, shall be notified by the Workers' Compensation Court that an employee has been receiving weekly workers' compensation benefits for fifty-two (52) weeks. Said notice shall advise of the right to have the Workers' Compensation Court conduct an anniversary review under § 28-33-46 of the Rhode Island General Laws. Said notice shall also state that the anniversary review will be deemed waived by the employer unless an employer's petition to review is filed with the Workers' Compensation Court within fourteen (14) days of the date of receipt of said notice.

(B) Upon receipt of a request for anniversary review, the Administrator's Office shall refer the matter to the Medical Advisory Board for an evaluation by an independent health care review team which shall include a vocational rehabilitation counselor.

Upon receipt of the report of the independent health care review team, the Administrator's Office shall assign the matter to a judge for pretrial conference pursuant to § 28-35-20 who shall conduct a hearing and make findings as required by R.I.G.L. § 28-33-46.

## 2. 31. REVIEW OF ACTION BY DEPARTMENT OF LABOR AND TRAINING OR MEDICAL ADVISORY BOARD

(A) Any party may file a petition with the court to review a decision of the Department of Labor and Training or a determination of the Medical Advisory Board within thirty (30) days of the date the decision or determination enters.

The petitioner shall file with the court a copy of the decision or determination to be reviewed, along with a concise statement of their grounds for appeal. The respondent need not file a responsive pleading unless otherwise required by statute or court order.

(B) The original or a certified copy of the entire record of proceeding under review shall be transmitted to the court within thirty (30) days after the petition is filed, unless the court orders otherwise.

(C) After a petition is filed, the court shall establish a schedule for the submission of briefs by the parties regarding their respective positions.

(D) The Workers' Compensation Court Rules of Procedure shall govern the proceedings. The court may consider evidence of procedural irregularities at the Department of Labor and Training or the Medical Advisory Board.

(E) The court shall not substitute its judgment for that of the Department of Labor or the Medical Advisory Board regarding the weight of the evidence on questions of fact. The court may affirm or remand the case for further proceedings. The court may reverse or modify the decision or determination if substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusion, decisions, or determinations are:

- (1) In violation of constitutional authority of the agency;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

**Reporter's Notes. Rule 2. 31 implements the procedure to address the expanded jurisdiction of the court as an appellate body to review the action taken by other departments and agencies under the provisions of the Workers' Compensation Act. In appeals to the Workers' Compensation Court in cases involving the discipline of**

health care providers by the Medical Advisory Board and the decisions and orders of the Department, the court's role appears to be simply to review the determinations made by the department or board to ensure that the parties were afforded all substantive and procedural due process rights. Accordingly, the function of the court is analogous to the role of the District or Superior Court in reviewing agency appeals pursuant to R.I.G.L. § 42-35-15. Although all proceedings under the provisions of the Workers' Compensation Act are specifically exempted from the Administrative Procedures Act pursuant to R.I.G.L. § 42-35-18(b) (6-15), the standard of judicial review of administrative actions established by this section provides helpful guidance in this area and indicates the standards which must be met to ensure proper procedural safeguards. Accordingly the review of the actions of the Department of Labor and Training and the Medical Advisory Board is limited to the record developed below to ensure that the action taken was proper. The Workers' Compensation Court may not, however, substitute its judgment for that of the board or department as to the weight of the evidence on factual issues which have been determined by the department or board.

## 2. 32. APPROVAL OF REHABILITATION PROGRAM

(A) Any party may file a petition with the court to approve a rehabilitation program pursuant to R.I.G.L. § 28-33-41 (b). The petition shall set forth all the pertinent facts regarding the program including, but not limited to, the exact nature of the employee's injury, the length of incapacity, the names and addresses of all medical care providers who have treated the employee and the exact nature of the proposed rehabilitation program.

(B) The petitioner shall attach the following documents to the petition:

(1) A legible copy of the most recent document ordering payment of weekly benefits to the employee along with a copy of the original document(s) establishing liability and describing the nature and location of the work related injuries.

(2) Four copies of all medical records pertaining to the diagnosis and treatment of the employee's work injury.

(3) Four copies of the rehabilitation provider's report detailing the precise medical restorative services, vocational restorative services or re-employment services recommended for the injured employee.

(4) If the injured employee is the petitioner, an affidavit signed by the employee attesting that he/she is desirous of pursuing the proposed rehabilitation plan and acknowledging that his/her failure to cooperate with a plan approved by the Court may jeopardize his/her receipt of future compensation benefits.

The Office of Administrator shall not accept for filing any petition seeking approval of a rehabilitation program unless it is accompanied by all of the necessary documents set forth above.

(C) The Administrator's Office shall refer all such petitions to a Judge of the Court who shall conduct a mandatory pretrial conference as is provided for in §28-35-20 of the Rhode Island Workers' Compensation Act. At the pretrial conference, the Judge may refer the petition to the Medical Advisory Board with instructions to have the employee evaluated as the Judge may direct. Such evaluation may be performed by an individual to be selected by the Judge or by an independent health care review team whose composition will be determined by the Judge.

**Reporter's Notes. Rule 2. 32 was completely revised in September 2000 to establish a procedure to support the most recent amendment to R.I.G.L. §28-33-41(b). The Workers' Compensation Court assumed original jurisdiction over disputes arising under this section of the act pursuant to P.L. 2000, Ch. 491, §4. Prior to the passage of this act, disputes relating to the provisions of rehabilitative services were initially heard at the Department of Labor and Training and any party dissatisfied with the department's ruling was given the opportunity to appeal the matter to the Workers' Compensation Court.**

**Since the court was essentially reviewing the actions of an administrative body, the scope of the review was modeled after the Administrative Procedures Act and essentially focused on whether the record contained competent evidence to support the Director's findings and whether appropriate procedural protection was accorded to the parties.**

**The present act grants the Court original jurisdiction to adjudicate these matters. The rule as adopted requires the petitioner to submit the necessary records in support of the proposed rehabilitation plan. The procedure is revised to allow the Court to screen requests for approval of rehabilitation programs. The revised procedure allows the Court to avoid abuses of the statute.**

## **2. 33. INSURANCE COVERAGE DISPUTES**

(A) In any case filed pursuant to the provisions of R.I.G.L. §28-30-13, involving a dispute regarding coverage under the provisions of a Workers' Compensation insurance agreement, the party seeking review of the insurance contract shall file with the Administrator's Office a petition for determination of an insurance controversy which shall contain (1) a short and plain statement of the claim showing that the petitioner is entitled to relief and (2) a prayer setting forth the relief sought by the petitioner. Relief in the alternative or in several different types may be demanded. The petition shall set forth the name, address and agent for service of each respondent.

(B) (1) The petitioner shall effect service upon each respondent by delivering a copy of the petition and summons to a person individually or, if a private corporation, by delivering a copy of the petition and summons to an officer, or a managing or general agent or by delivering a copy of the petition and summons at an office of the corporation to a person employed by said corporation, or by delivering a copy of the petition and summons to an agent authorized by

appointment or by law to receive service of process. If the respondent is a public corporation, body or authority, service shall be made by delivering a copy of the summons and petition to any officer, director or manager thereof.

(2) The summons shall be under the seal of the Court, identify the Court and the parties, be directed to the respondent, and state the name and address of the petitioner's attorney or, if unrepresented, the petitioner. It shall also state that the respondent must file an answer in conformance with subsection (C) of this rule within twenty (20) days of service of the petition and notify the respondent that the failure to do so will result in a judgment by default against the respondent for the relief demanded in the petition.

(3) Service of all process shall be made by a sheriff or the sheriff's deputy, within the sheriff's county, by a duly authorized constable or by a person who is not a party and who is at least eighteen (18) years of age.

(4) The person effecting service shall make proof of such service upon the original process or a paper attached thereto for that purpose and shall return it to the petitioner's attorney. The petitioner's attorney shall file such proof of service with the Court.

(C) Within twenty (20) days of the receipt of the petition, the respondent shall file a formal answer to the petition. The answer shall state in plain and concise terms the respondent's defenses to each claim asserted. The answer shall admit or deny each allegation upon which the petitioner relies. In the event that the respondent lacks sufficient knowledge to form a belief regarding the truth of an allegation, the pleading shall so state and such response shall be deemed a denial of the allegation. In the event that the respondent fails to respond to a specific allegation in the petition, such allegation shall be deemed to be admitted.

(D) In the answer, the respondent shall affirmatively set forth any matter constituting an avoidance or affirmative defense. In the event that the respondent fails to plead an avoidance or affirmative defense, such matter shall be deemed to be waived.

(E)(1) When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by this rule and that fact is made to appear by affidavit or otherwise, the Court shall enter the party's default. No judgment shall enter against an infant or incompetent person unless represented in the action by a guardian, guardian ad litem or such other representative who has appeared therein.

(2) No judgment by default shall be entered until the filing of an affidavit made by some competent person on the affiant's own knowledge, setting forth facts showing that the respondent is not a person in military service as defined in Article I of the "Soldiers and Sailors Civil Relief Act" of 1940, as amended, except upon order of the court in accordance with that Act.

(F) Upon the filing of the petition, the Chief Judge of the Workers' Compensation Court shall assign the matter to a judge and the Court shall forthwith notify the parties of the judge to whom the matter has been assigned. All subsequent proceedings shall be conducted before the judge to whom the matter has been assigned except as otherwise provided in these rules.

(G) Following the filing of the petition and the answer, the judge to whom the matter has been assigned shall direct the parties to appear before him/her for a conference to consider:

- (1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The necessity or desirability of adding or joining additional parties to the action;
- (4) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (5) The limitation of the number of expert witnesses; and
- (6) Such other matters which may aid in the efficient disposition of the action.

At the close of the conference, the judge shall enter a conference order which shall establish dates for the closing of discovery, the submission of all pretrial memoranda designated by the trial judge, and the dates for the trial. Except for good cause shown, the parties shall conclude all pretrial discovery within forty-five (45) days of the date on which the scheduling conference is conducted and the matter shall be assigned to trial within twenty-one (21) days of the date on which discovery is concluded.

(H) Following trial on the merits, the court shall render a decision which responds to the petitioner's prayer for relief and the court shall prepare an appropriate decree pursuant to Rule 2.20 of these rules.

**Reporter's Notes.** In 2000, the General Assembly expanded the jurisdiction of the Court to provide for the adjudication of disputes between an employer and an insurance carrier regarding a policy of workers' compensation insurance. This was a revolutionary change for several reasons. For the first time, the court exercised jurisdiction in cases not arising from a dispute between an employer and an employee regarding the employee's right to a workers' compensation benefit. Prior to this time, the statutory and decisional law was clear that disputes between an employer and an insurer relating to insurance coverage were not within the court's basic jurisdiction. While the adjudication of cases of this nature may well seem to be a logical evolution of the court's authority, it was nevertheless a major expansion of the court's authority.

The second significant aspect of this statutory change which was noteworthy involved the pretrial conference. Cases of this nature are not heard at pretrial conference pursuant to R.I.G.L. § 28-35-20 as are most other cases filed with the court. Since these cases do not involve a claim for a weekly compensation benefit and are not intended to address an issue regarding wage replacement, it was felt that the need to enter a binding pretrial order was not significant and the more traditional approach was adopted. In fact, the procedure adopted by the court more closely tracked the rules of civil procedure rather than the rules relating to petitions for compensation benefits.

This rule was extensively revised in 2004 to ensure that respondents are provided with ample notice and the opportunity to appear and defend. Rule 2.33 (B) requires the petitioner to effect service upon the respondent utilizing the basic

processes set out in Rule 4 of the Superior Court Rules of Civil Procedure to provide in hand service in most situations. This is a significant departure from the standard practice of the Workers' Compensation Court pursuant to R.I.G.L. § 28-35-14 which generally charges the Court with the responsibility to serve petitions upon the respondents. However, since disputes regarding insurance coverage require responsive pleading and the rules establish a default procedure if such answer is not filed (Rule 2.33(E)), the Court determined that actual service was the most efficient way to join the issues. The respondent in cases of this nature is required to file an answer with the court addressing the allegations of the petition and raising any available affirmative defenses. If affirmative defenses are not raised in the answer they are deemed waived.

Upon the filing of the answer, the petition is assigned to a trial judge who will thereafter establish a schedule for the completion of discovery and for the filing of pretrial briefs and motions. It is anticipated that the procedure adopted by the court will essentially track the procedure followed in the Rhode Island Superior Court in cases seeking declaratory relief pursuant to the Uniform Declaratory Judgments Act (R.I.G.L. § 9-30-1 to 9-30-16).

#### 2.34 PROCEDURE REGARDING STOP WORK ORDERS PURSUANT TO R.I.G.L. § 26-36-15(e)

(A)(1) In the event that the Director of the Department of Labor and Training issues an order suspending the operation of a business for failure to secure compensation insurance, the employer may appeal the entry of the order to the Workers' Compensation Court on forms prescribed by the Court.

(2) The Court shall schedule a hearing within five (5) days of the filing to determine whether the suspension order was proper or whether the order of suspension may be lifted. In order to obtain a court order lifting the Director's Order of Suspension, it shall be the burden of the employer/appellant to present specific facts to demonstrate that:

(a) The substantial rights of the employer have been prejudiced because the Director's order is

- (1) In violation of the Department's constitutional or statutory authority;
- (2) Made upon unlawful procedure;
- (3) Arbitrary, capricious or characterized by clear abuse of discretion; or
- (4) Clearly erroneous; and

(b) It clearly appears from specific facts that immediate and irreparable loss, damage or injury will result to the employer if the order of suspension remains in effect during the pendency of the suspension.

(3) The proceeding to stay the order of suspension pending a hearing on the merits shall be on the record. All agreements or stipulations entered during the course of the proceeding shall be binding.

(4) Following the hearing, the Court shall issue an order determining whether the Director's Order of Suspension may be stayed during the appeal on the merits or whether the order shall remain in full force and effect. In its order the Court shall set a date for full hearing on the merits no later than 21 days hence.

(B)(1) In the event that the Director of the Department of Labor and Training issues an order suspending the operation of the business for failure to secure compensation insurance and it appears that the employer has failed to comply with said order, the Director may file a petition with the Court for an emergency hearing to enforce the terms of its order. The petition shall set forth specific facts setting forth the basis for said order, the dates on which the Order of Suspension was entered by the Department and served upon the employer and specific facts demonstrating that the employer has continued to operate its business following the entry of said order.

(2) The Court shall schedule a hearing on said petition to enforce within 48 hours of the date of filing. The director shall effect personal service of the petition on the employer as set forth in Rule 2.33(B) of the Workers' Compensation Court's Rules of Practice and shall make affidavit to the Court that such service has been effected prior to the time of the hearing.

(3) The Court shall conduct a pretrial conference in connection with the Director's Petition to Enforce in accordance with R.I.G.L. §28-35-20 and Rule 2.3 of the Workers' Compensation Court's Rules of Practice. Following the conference, the Court shall issue a pretrial order which responds to the Director's prayer for relief. Said order shall be binding on the parties as of the date of entry and an appeal of the order shall not stay its operation. If either party is aggrieved by the Court's order, they may file a Claim for Trial which shall proceed in accordance with the Workers' Compensation Act and the Court's Rules of Practice.

**Reporter's Notes. This rule is new and was enacted to establish the procedure in those cases where the Director of the Department of Labor and Training issues an order requiring an employer to cease operations for failure to maintain workers' compensation insurance pursuant to R.I.G.L. § 28-36-15(e). The new rule recognizes that such an order could have devastating impact upon the operation of a business and therefore allows the employer to file an immediate appeal to the Workers' Compensation Court seeking a stay of the Director's order. The employer has the duty to present specific facts setting forth the procedural or substantive errors made by the Director and, more importantly, requires the employer to present specific facts to demonstrate that irreparable harm will result if the order is not stayed pending appeal. Such petitions will be heard by the Court within five days of the date of filing.**

**Rule 2.34 (B) addresses the situation where the Director has issued an order suspending business operations for the failure to secure compensation insurance and the employer continues to conduct operations in defiance of that order. R.I.G.L. § 28-36-15(e) specifically notes that "the operation of a commercial enterprise without the required workers' compensation insurance is a crime and creates a clear and present danger of irreparable harm to employees who are**

**injured while the employer is uninsured.” In light of this, the Court determined that immediate action was required where the employer is operating in defiance of a Director’s order. Rule 2.34 (B) allows for a hearing within 48 hours of the date a petition seeking relief is filed and imposes upon the Department of Labor and Training the duty to make actual service upon the employer consistent with the requirements of Rule 2.33 (B). The Court will hear the matter in the setting of a pretrial conference. The rule provides that if the Court is satisfied that the employer is required to maintain insurance and has failed to do so, a pretrial order may enter suspending the employer’s business operations. If the employer continues to conduct business following the pretrial order, it would be subject to proceedings to adjudge the business in contempt of court.**

### III

#### RECORDS

3.1. HOURS. - - The Administrator's office shall be open from 8:00 A.M. to 4:30 P.M. Mondays through Fridays, or such other time as the Court may set. Trials shall be conducted from 9:30 A.M. to 12:30 P.M., and from 2:00 P.M. to 4:30 P.M. Mondays through Fridays, or such other times as the Court may set.

3.2. PROOF OF FILING. - - The only proof of the time of filing any paper shall be the filemark of the Office of Administrator. No paper shall be treated as filed unless said paper is received in the Administrator's office before the end of the day upon which said paper is required to be filed.

3.3. BRIEFS. - - Every brief or memorandum of authorities filed with the Court shall be printed or typewritten, on good paper, 8 ½ by 11 inch, distinctly legible, and shall be signed by the attorney presenting it. Said brief or memorandum shall contain (1) a brief and concise statement of the case, (2) the specific questions raised, and (3) legal argument, together with the authorities relied on in support thereof. In cases where it may be necessary for the Court to conduct an examination of record evidence, each party shall specify in their brief the leading facts which they deem established by the evidence, with a reference to the transcript or deposition pages where the evidence of such fact may be found.

Briefs or memoranda of authorities shall be bound at the top and not on the side and shall contain signed certification that a copy has been forwarded to all counsel of record.

3.4. WITHDRAWAL OF EVIDENCE. - - After the final disposition of a case, attorneys may, with the approval of the Court, withdraw all exhibits introduced into evidence and not required by statute, rule, or special order to remain on file. If the same are not withdrawn within ninety (90) days the Office of Administrator shall not be required to preserve the same. If the Court shall so direct, the parties shall substitute exact copies of any exhibit so withdrawn.

3.5. AMENDMENT OF RECORDS. - - The court may allow amendments, which do not affect legibility, to be made on the face of the original document provided that any amendment so made shall be dated and signed or initialed by counsel and/or the Trial Judge.

3.6. PARTIES - - DESIGNATION OF RECORDS. - - Every petition filed with the Court shall have endorsed thereon the name and address of the party, and if filed by the employee, his or her Social Security Number, and the name, address and telephone number of the attorney, if any, representing the same and the name and mailing address of the respondent. Every

document subsequently filed in any case shall also have endorsed thereon the name and number of the case and a brief designation of the character of the paper.

3.7. PRESENTATION OF DOCUMENTS FOR ENTRY AND SIGNATURE. - - All motions, orders, decrees, requests for extension of time for filing reasons of appeal or any other document presented for entry or the signature of any Judge shall be accompanied by the file pertaining to said matter.

All motions, orders, decrees, requests for extension of time for filing reasons of appeal or any other documents shall be executed by the Judge to whom the matter has been assigned or who rendered the decision in said matter, unless said Judge is not in attendance at the Court due to illness or vacation in which case the document shall be presented to the duty Judge for signature.

## IV

### APPEALS

4.1. TRANSCRIPT. - - Every party requesting a stenographer to transcribe testimony taken in a hearing by him or her shall, forthwith, deposit with the Office of Administrator of the Court such sum as the stenographer shall estimate to be the cost of the transcription, computed at the rate of three dollars and 00/100 (\$3.00) per page for originals and one dollars and 50/100 (\$1.50) per page for copies thereof. Where two or more parties each claim an appeal in the same cause or proceeding, and each party orders a complete transcript, only one transcript shall be required, and if the total amount deposited by all the parties exceeds the cost of the transcript, the excess shall be divided equally among the depositors and each depositor shall be repaid their proportionate share. This rule shall apply to all parties except the State of Rhode Island which shall have thirty (30) days in which to make said deposit.

4.2. APPEAL TO THE APPELLATE DIVISION. -- When a party appeals to the Appellate Division, he/she/it shall upon filing said claim of appeal forthwith forward a conformed copy of said appeal to all other parties which shall include all dates, amounts, and times contained in the original claim of appeal. Any requests thereafter granted to extend the time for filing the reasons of appeal and the transcript shall likewise be sent to all other parties forthwith.

4.3. CLAIM OF APPEAL TO THE APPELLATE DIVISION. - - Where a party who has been aggrieved by a decree of a Trial Judge and has filed a claim of appeal to the Appellate Division, fails to perfect the appeal by filing the reasons of appeal within the time prescribed, or for any other cause, the Workers' Compensation Court shall issue an order to show cause why the appeal should not be dismissed, mailed to both the appellant and the appellee, setting the same down for hearing to a day certain before the Trial Judge who rendered the decision. This rule shall apply to all pending matters wherein the appellant has failed to perfect the appeal.

4.4. EXTENSION OF TIME. - - (A) When no transcript is requested, reasons of appeal shall be filed within twenty (20) days of the date on which the claim of appeal is taken.

(B) When a transcript is requested, the stenographer shall notify the parties that the transcript has been completed and that the reasons of appeal must be filed within twenty (20) days of the date of said notice.

(C) The Court shall grant only one ex parte extension of time and said extension shall not be granted for more than thirty (30) days.

(D) Additional extensions of time shall be granted by motion with notice to all parties or by written agreement signed by all parties and approved by the Court.

**4.5 PRACTICE ON APPEAL.** – (A) Within ten (10) days of the filing of the reasons of appeal with the Office of the Administrator of the Court, the appellant or other moving party shall file a statement of the case and a summary of the issues proposed to be argued on appeal. This document shall be concise, not exceeding five (5) pages, and a copy of the same shall be mailed to the appellee(s). Within ten (10) days after the filing of the above statement, the responding party may file a counter-statement, not to exceed five (5) pages. Failure to file a counter-statement shall be deemed a waiver of the same.

(B) (1) Following the filing of such statements, the court may require the appearance by counsel for the parties before a single justice of the court for a conference. Counsel shall be prepared to engage in meaningful discussion of the matter with the goal of achieving settlement of the dispute. If a settlement is not reached, the objectives of the conference shall be to determine the issues on appeal and to determine the manner in which the appeal shall proceed.

(2) At the time scheduled for the settlement conference, counsel for all parties shall submit a joint filing which shall certify that they have conferred in good faith to attempt to resolve the disputed issues prior to the time of the conference.

(C) In the event that the single justice of the court determines it appropriate, he or she may:

(1) refer the appeal to an appellate panel for disposition of the issues on appeal by order or opinion without further argument; or

(2) order that the matter be placed on the regular appellate calendar for oral argument before an appellate panel.

In either situation, the single justice may direct or allow the filing of supplemental memorandum by the parties and set the time for the filing of same.

**Reporter's Notes.** The recent amendment to this rule codifies the settlement conference procedure which has been operating as a pilot program for several years. This procedure was reviewed and endorsed by the Supreme Court's Committee on Alternate Dispute Resolution as an effective vehicle to reduce the issues in dispute and to foster meaningful dialogue calculated to resolve the matter. The appellant must file a statement of the case within ten days of the date on which reasons of appeal are filed. Thereafter, the appellee is given the opportunity to respond. The matter will then proceed to settlement conference.

**This rule also changes the procedure for show cause hearings. Following settlement conference, the matter may be assigned to an appellate panel for disposition “without further argument” or, if appropriate, assigned for further argument before the Appellate Division. This new provision is modeled after Rhode Island Supreme Court Rules, Art. I, Rule 12A(3)(b) and simply allows the Appellate Division to expedite the handling of those cases where the appeal has not been perfected or where the issue on an appeal is relatively simple and unequivocally controlled by settled law. In all other cases, it is anticipated that the matter will be heard at oral argument.**

4.6. DECREEES OF APPELLATE DIVISION. No final decree shall be entered by the Appellate Division without forty eight (48) hours notice to all parties regardless of whether it is a new decree or merely affirms the decree of the Trial Judge.

4.7. REVIEW BY CERTIORARI - - PROCEDURE. - - A copy of all petitions to the Supreme Court of the State of Rhode Island for a writ of certiorari involving a final decree of the Appellate Division of the Workers’ Compensation Court shall be filed with the Office of Administrator of the Workers’ Compensation Court and contemporaneously with the clerk of the Supreme Court.

A copy of the order of the Supreme Court granting or denying said writ of certiorari shall forthwith be filed with the Office of Administrator of the Workers’ Compensation Court by the attorney for the prevailing party.

V.

PRO HAC VICE

5.1 OUT OF STATE COUNSEL. No person, who is not an attorney and counselor of the Supreme Court of the State of Rhode Island, shall be permitted to act as attorney or counselor for any party in any proceeding, hearing or trial in the Workers' Compensation Court unless granted leave to do so by the Workers' Compensation Court or by the Supreme Court. Unless the Workers' Compensation Court or the Supreme Court permits otherwise, any attorney who is granted such leave to practice before the Workers' Compensation Court shall not engage in any proceeding, hearing, or trial therein unless there is present in the courtroom for the duration of the proceeding, hearing, or trial a member of the bar of Rhode Island who shall be prepared to continue with the proceeding, hearing or trial in the absence of counsel who has been so granted leave.

Subject to the limitations and exceptions set forth in Article II, Rule 9 of the Supreme Court Rules for the Admission of Attorneys and Others to Practice Law, leave shall be granted by the Workers' Compensation Court in its discretion upon a miscellaneous petition signed by the petitioner in a form approved by the court [Exhibit A], supported by certifications of the attorney seeking admission pro hac vice and of Rhode Island associate counsel [Exhibit B], and assented to by the party being represented in a client certification [Exhibit C].

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# MISCELLANEOUS PETITION FOR ADMISSION PRO HAC VICE

\_\_\_\_\_ hereby requests that \_\_\_\_\_  
 Petitioner  
 be admitted pro hac vice in the above-case/agency proceeding as associate trial counsel with  
 local associate counsel identified below, on the following grounds [Please check appropriate  
 grounds and provide specifics]:

- ☐ The case/agency proceeding involves the following complex areas of the law, in which pro hac vice counsel concentrates:

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☐ Pro hac vice counsel's long-standing representation of the client:

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☐ The local trial bar lacks experience in the field of:

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☐ The case/agency proceeding involves complex legal questions under the law of a foreign jurisdiction with which pro hac vice counsel is familiar, specifically:

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☐ The case/agency proceeding requires extensive discovery in a foreign jurisdiction convenient to pro hac vice counsel, as follows:

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☐ It is a criminal case, and pro hac vice counsel is defendant's counsel of choice.

☐ Other:

I hereby represent that I am a member in good standing of the bar of the State of Rhode Island and that I am actively engaged in the practice of law out of an office located in this state.

\_\_\_\_\_  
Attorney for: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Pro Hac Vice Counsel

#### **CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, hereby certify that a true copy of the within petition for admission pro hac vice with accompanying attorney and client certifications were sent postage prepaid to \_\_\_\_\_, on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_

[illegible]

## ATTORNEY CERTIFICATION FOR PRO HAC VICE ADMISSION

5. For purposes of this case I have associated with local associate counsel identified below, and have read, acknowledge, and will observe the requirements of this Court respecting the participation of local associate counsel, recognizing that failure to do so may result in my being disqualified, either upon the Court's motion or motion of other parties in the case.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Business Address

CERTIFICATION OF LOCAL ASSOCIATE COUNSEL

I certify that I have read and join in the foregoing Certification, and acknowledge and agree to observe the requirements of this Court as related to the participation and responsibilities of local associate counsel.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Local Associate Counsel  
RI Bar ID #

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Business Address

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PROVIDENCE, SC WORKERS' COMPENSATION  
COURT

v.

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:  
:  
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W.C.C.

CLIENT CERTIFICATION

I, \_\_\_\_\_, certify that:

1. I am the plaintiff/defendant or an authorized representative of a corporate or business entity which is the plaintiff/defendant in this case;

2. I am aware that Attorney \_\_\_\_\_, is not a member of the Rhode Island bar, but that he/she has applied for permission to appear in this case on my behalf;

3. I am also aware that, if Attorney \_\_\_\_\_ is permitted to appear in this case, I will also be required to engage as co-counsel and pay for the services of a lawyer who is a member of the Rhode Island bar;

4. I am also aware that the Rhode Island lawyer engaged must be fully prepared to assume complete responsibility for the case at any time, and may be required to conduct the trial/ hearing/appeal in this case on my behalf (or on behalf of the corporate or business entity);

5. Having been advised of the matters set forth above, I support the request of Attorney \_\_\_\_\_ to be permitted to appear in this case on my behalf (or on behalf of the corporate or business entity), in accordance with the rules of this Court and of the Supreme Court of the State of Rhode Island.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

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Print Name

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Date